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JUL 6 1984
ALEXANDER L. STEVAS,
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No. 83-1997

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1983

JOHN C. AMIS, JR.
D/B/A AMEY, INC., GULF MAPS, BONITA REALTY
Appellants

v.

CITY OF FORT MYERS, FLORIDA
and the CODE ENFORCEMENT BOARD
of the City of Fort Myers
and ELLIS SOLOMON, Mayor,
Appellees

APPEAL FROM THE DISTRICT COURT OF FLORIDA
SECOND DISTRICT

MOTION TO DISMISS

JAMES L. GOETZ, ESQUIRE
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BEST AVAILABLE COPY

QUESTIONS PRESENTED UPON APPEAL

The question set forth in the jurisdictional statement of the Appellant is an inaccurate statement of the issue which the Appellant seeks to raise. The correct question is whether the failure of the State Courts of Florida to give written explanation for their decisions constitutes a denial of due process protected under the Fourteenth Amendment to the United States Constitution.

TABLE OF CONTENTS

	Page
Questions Presented Upon Appeal.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
Opinions Below.....	1
Jurisdiction.....	1
Constitutional and Statutory Provisions Involved.....	1
Statement of the Case.....	2
Motion to Dismiss	
1. The failure of state courts to render written opinions explaining their decisions does not constitute a denial of due process resulting in an unconstitutional taking of property.....	7
Conclusion.....	11
Certificate of Service.....	12
Appendix.....	A-1

TABLE OF AUTHORITIES

Cases:	Page
International Brotherhood, T. C. W. & H. v. Denver Milk Producers 334 U.S. 809 (1948)	9
Simmons v. West Haven Housing Authority 399 U.S. 510 (1970)	8
Constitutional and Statutory Authorities	
U.S. Const. amend. XIV	1
Fla. Const. Art. 1 Sec. 2	1,10
Fla. Const. Art. 1 Sec. 21	1,10
Fla. Statutes Ch 166	4
Fla. Statutes Ch 166.057	1,9
Fla. Statutes Ch 166.061	1,8

OPINIONS BELOW

The Appellees are in agreement with the representations set out by the Appellant.

JURISDICTION

The Appellees are in agreement with the Appellant's representations as to the various actions attributed to the State Courts of Florida, but denies that this Court's jurisdiction is invoked in this case pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Appellees are in agreement with the representations set out by the Appellant.

STATEMENT OF THE CASE

The Appellees offer the following as a more complete rendition of the facts in this case than presented by the Appellant.

In July, 1963 Amey, Inc., a Florida corporation, purchased a parcel of land within the City of Fort Myers and which was then zoned for business and began conducting business on the property as one or more corporations. In 1967, pursuant to then applicable Florida Statutes, the City of Fort Myers undertook a rezoning program for the whole city and after giving proper legal notice entered into and completed a rezoning program which in part resulted in the property of the Appellant being rezoned from business to residential. All legal notice requirements were met. Subsequent to the rezoning the Appellant failed to obtain city occupational licenses and improperly operated businesses in a residential zone. In February, 1979, Amey, Inc. deeded the parcel of land to the Appellant. At all times material hereto the Appellant was the sole or

controlling stockholder or principal in those organizations reflected in the style of the case.

After receiving due and proper notice, on January 21, 1982, the Appellant appeared before the Code Enforcement Board of the City of Fort Myers concerning the violations. It was explained to the Appellant that his failure to obtain appropriate occupational licenses subsequent to the rezoning resulted in his three businesses no longer being qualified under the "grandfather clause" at their present location as to businesses operating in a residential zone. Although the Code Enforcement Board was not able to rezone the Appellant's property, the Board at their meeting and within their power decided to allow the Appellant to operate his three business organizations at the subject location provided that the Appellant reimburse the City for the accrued fees and charges owing the City as the result of his failure to obtain the appropriate occupational licenses. It was further decided

that the Appellant be allowed one week to purchase all delinquent licenses and to pay all appropriate fines. The Appellant responded by attempting to pay his fines with "public office money certificates" (non-legal tender) dated January 29, 1982. The public office money certificates were not accepted by the City as they did not constitute legal tender. This matter, after due and proper notice to the Appellant, was heard again by the Code Enforcement Board on February 24, 1982 at which time the Board entered an Order fining the Appellant. The Appellant again refused to reimburse the City for the accrued fees and charges owing the City from the operation of his businesses and pursuant to Chapter 166, Florida Statutes, the City of Fort Myers on March 5, 1982 filed a lien against the property of the Appellant. Chapter 166, Florida Statutes, provided for the establishment of the Code Enforcement Board by the City of Fort Myers and also permitted the filing by the City of a lien

on the land where the violating business existed, regardless of the ownership of such land. On March 25, 1982 the Appellant filed a Writ of Certiorari in the Circuit Court in and for Lee County, Florida alleging that the filing of the lien by the City constituted a taking of property without due process of law. The Appellant's Petition for Writ of Certiorari in the Circuit Court was dismissed with prejudice after its third Amendment and such dismissal was without an opinion. The Circuit Court, in its wisdom, chose not to comment on the allegations set forth in the Third Amended Petition for Writ of Certiorari of the Appellant wherein, among other things, he stated that he was ready and willing to pay any and all city taxes which he might owe the City but was unable to do so since "no gold or silver coin or redeemable certificates circulate as money within the borders of the State of Florida, as such the Petitioner cannot lawfully discharge his liability for the tax debt.!" The Circuit Court's dismissal with prejudice was entered on

May 12, 1983.

Appellant's appeal was dismissed by the Second District Court of Appeal on December 9, 1983 PER CURIAM without an opinion.

Appellant's Motion for Rehearing or for Clarification was denied on January 11, 1984 without an opinion.

Appellant filed an appeal to the Florida Supreme Court on February 28, 1984 and which was dismissed subject to reinstatement if jurisdiction was established.

Appellant filed with the Florida Supreme Court a Motion for Reinstatement on February 28, 1984 and which was denied on March 7, 1984.

MOTION TO DISMISS

1. The failure of state courts to render written opinions explaining their decisions does not constitute a denial of due process resulting in an unconstitutional taking of property.

The Appellees move to dismiss the appeal from the District Court of Appeal of Florida, Second District. The gravamen of the Appellant's appeal is that the failure of the State Courts of Florida to render opinions to explain or support their decisions constitutes a denial of due process under the Fourteenth Amendment of the United States Constitution. It is interesting to note that the Appellant is not claiming that the decisions constitute a denial of due process, but only that the failure of the lower courts to render written opinions explaining their decisions constitutes the denial of due process claimed. It is the position of the Appellant

that the issuance of decisions by the lower courts without opinions denies the Appellant further judicial review in the State Courts of Florida and that such action constitutes a denial of due process and equal protection under the Fourteenth Amendment to the United States Constitution. The Appellees know of no constitutional obligation or statutory obligation of the State Courts of Florida to render written opinions explaining their decisions as to matters concerning actions taken by Code Enforcement Boards and cities under Section 166.061, Florida Statutes, now known as Section 162.11, Florida Statutes. It is well settled that the Supreme Court will generally not hear an appeal where the record does not clearly disclose the ground of the lower court's decision. Simmons v. West Haven Housing Authority, 399 U.S. 510 (1970). It has also been held that the Supreme Court will not hear an appeal where the record is unadequate for the purpose of deciding the constitutional

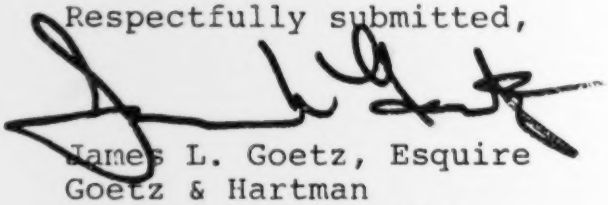
issues presented. International Brotherhood, T. C. W. & H. v. Denver Milk Producers, 334 U.S. 809 (1948). The Appellant does not have an inalienable right to a written opinion as to each lower court decision. To impose such an obligation on the State Courts would create an enormous administrative burden on the State Courts of Florida which would virtually paralyze the judicial process. While it is true that the law which permitted the creation of the Code Enforcement Board made a specific requirement that any Order of the Board may be appealed to the Circuit Court for review, the law does not contain any requirement that the Circuit Court render a written opinion as to any Order entered. Section 166.057, Florida Statutes. The Appellees see little merit in the argument of the Appellant that he has been denied due process when he was given the opportunity by the Circuit Court to file numerous amended Complaints prior to having

his Third Amended Complaint dismissed with prejudice after ample opportunity to perfect such Complaint. The Appellant, in his appeal to the Court of Appeal in Florida had the right and took the opportunity to file both his multi-page appeal and multi-page reply brief and has not had his access to the courts restricted in any manner whatsoever. Certainly, Sections 2 and 21, Article 1, Constitution of the State of Florida have not been violated by the actions of the lower courts and the Appellant to allege that he has been denied access to the courts because he has not received a written opinion as to the decisions rendered by the courts is without merit or precedent. The Appellant was entitled to his day in Court and had his day and should not be entitled to another day in Court just because he is dissatisfied with the decision.

CONCLUSION

The failure of the District Court of Appeal of Florida, Second District, to give a written explanation for its decision denying the appeal of the Appellant did not constitute a denial of due process protected under the Fourteenth Amendment to the United States Constitution. Accordingly, the Appellees pray that this Court dismiss the appeal for a plenary review of the decision of the District Court of Appeal of Florida, Second District.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 5th day of July, 1984, mailed three copies of the Motion to Dismiss, postage prepaid to:

Jim Smith
Attorney General, State of Florida
Department of Legal Affairs
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Tallahassee, Florida 32304

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APPENDIX

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The Appellees accept, adopt and incorporate by reference the Appendix of the Appellant.